



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed May 11, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Rock County Department of Social Services in regard to Medical Assistance, a hearing was held on June 10, 2015, at Janesville, Wisconsin.

The issue for determination is whether the county agency is correctly seeking recovery of a \$2,430.01 BadgerCare (BC) Plus overpayment to the petitioner during the period of December 1, 2013 through July 31, 2014, due to her failure to timely report an increase in her husband's earned income resulting in unpaid BC premiums and incorrectly paid HMO capitation fees for petitioner and her husband.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County who resides with her husband, [REDACTED], and their two children.

- [REDACTED]
2. The petitioner received BadgerCare (BC) benefits for a household of four during the period of October, 2013 through July, 2014.
 3. The county agency sent notices to the petitioner on February 5, 2013 and January 9, 2014. Those notices explained to the petitioner her "10 day reporting requirement" requiring her to timely report her changes in her household's employment and income to the county agency. The February 5, 2013 notice stated specifically that if petitioner's household's income went above \$2,610.13 regarding her BadgerCare benefits, she was required to report that increased income to the agency by the 10th of the month following that change.
 4. The petitioner's husband's ([REDACTED]'s) actual earned income from [REDACTED] during October, 2013 of \$3,244.88 was above the income reporting requirement of \$2,610.13 which required petitioner to report the increase in his household income by the tenth of November, 2013 (which affected the December, 2013 BC premiums for petitioner and her husband (not her two children).
 5. Petitioner failed to timely report to the agency her husband's increased income from his employer, [REDACTED].
 6. The petitioner received unearned income of \$231 during October through December, 2013 and \$248 during January, 2014, and then \$252 during the months of February and March, 2014.
 7. The county agency discovered [REDACTED]'s increased earned income through a SWICA wage match on or about August 21, 2014, which indicated that [REDACTED] had increased employment income during the fourth quarter of 2013 through the second quarter of 2014, but petitioner failed to timely report that increased household income to the county agency.
 8. [REDACTED] received the following monthly earned income from [REDACTED]: a) October, 2013 - \$3,244.88; b) November, 2013 - \$2,693.83; c) December, 2013 - \$2,612.80; d) January, 2014 - \$3,379.25; e) February, 2014 - \$2,889.91; f) March, 2014 - \$2,755.01; g) April, 2014 - \$2,602.63; h) May, 2014 - \$3,500.04; i) June, 2014 - \$2,453.26; and j) July, 2014 - \$3,124.50.
 9. The petitioner's husband's earned income was higher than petitioner reported resulting in unpaid premiums for herself and her husband during the months of December, 2013 through March, 2014 resulting in an overpayment of \$539.00.
 10. The petitioner's total household income during the period of the period of April, 2014 through July, 2014 was above the 100% federal poverty level (FP) income eligibility limit of \$2,020.84 for a household of four, and thus the agency incorrectly paid for petitioner's HMO capitation fees resulting in an overpayment of \$1,891.01.
 11. The Department sent a May 19, 2015 BadgerCare Plus Overpayment Notice to the petitioner stating that her household received an overpayment of BadgerCare benefits in the amount of \$2,430.01 during the period of December, 2013 to July, 2014, due to her failure to timely report the increase in household income resulting in unpaid premiums and incorrectly paid capitation fees for herself and her husband (no BC overpayment for her two children).

DISCUSSION

The Department of Health Services (Department) is legally required to seek recovery of incorrect BadgerCare Plus (BCP) payments when a recipient engages in a misstatement or omission of fact on a BCP application, or fails to report income information, which in turn gives rise to a BCP overpayment:

49.497 Recovery of incorrect medical assistance payments. (1) (a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s.49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits *under this subchapter* or s.49.665.

2. **The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.**

3. **The *failure* of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf *to report any change in the recipient's financial or nonfinancial situation* or eligibility characteristics *that would have affected the recipient's eligibility for benefits* or the recipient's cost-sharing requirements.**

(b) The department's right of recovery is against any medical assistance recipient to whom or on whose behalf the incorrect payment was made. The extent of recovery is limited to the amount of the benefits incorrectly granted. ...

(Emphasis added)

Wis. Stat. §49.497(1). BCP is in the same subchapter as §49.497. See also, *BCP Eligibility Handbook(BCPEH)*, §28.1, online at <http://www.emhandbooks.wi.gov/bcplus/> :

28.1 OVERPAYMENTS.

An “overpayment” occurs when BC+ benefits are paid for someone who was not eligible for them or when BC+ premium calculations are incorrect. The amount of recovery may not exceed the amount of the BC+ benefits incorrectly provided. Some examples of how overpayments occur are:

1. **Concealing or not reporting income.**

2. **Failure to report a change in income.**

3. Providing misinformation at the time of application regarding any information that would affect eligibility.

(Emphasis added).

28.2 RECOVERABLE OVERPAYMENTS.

Initiate recovery for a BC+ overpayment, if the incorrect payment resulted from one of the following:

1. Applicant /Member Error

Applicant/Member error exists when an applicant, member or any other person responsible for giving information on the member's behalf unintentionally misstates (financial or non-financial) facts, which results in the member receiving a benefit that s/he is not entitled to or more benefits than s/he is entitled to. Failure to report non-financial facts that impact eligibility or cost share amounts is a recoverable overpayment.

...

2. Fraud. ...

BCPEH, §28.1 – 28.2.

[REDACTED]

The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

For administrative hearings, the standard of proof is the preponderance of the evidence. Also, in a hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

In the instant case, during the June 10, 2015 hearing and while the record was held open, the county agency presented a well-organized and documented case to establish that it was correctly pursuing a BC overpayment against the petitioner due to client error. The county agency discovered through a SWICA wage match that petitioner failed to timely report her husband's increase earned income by November 10, 2013. The county agency representative is correct that the February 5, 2013 notice to the petitioner did state that if petitioner's household income increased above \$2,610.13 the petitioner was required to report that income change to the county agency by the 10th of the next month. Thus, the petitioner owed unpaid premiums for herself and her husband and incorrectly paid HMO capitation fees for herself and her husband. See Findings of Fact #9 and #10. As a result, the county agency correctly determined that the petitioner was overpaid \$539 in unpaid BC premiums and \$1,891.01 in capitation fees.

The petitioner did not contest that her household had received BC Plus benefits during the overpayment period of December, 2013 through July, 2014. Furthermore, petitioner did not offer any evidence to refute the accuracy of the county's BC overpayment amount. Accordingly, based upon the above, I conclude that the county agency is correctly seeking recovery of a \$2,430.01 BadgerCare (BC) Plus overpayment to the petitioner during the period of December 1, 2013 through July 31, 2014, due to her failure to timely report an increase in her husband's earned income resulting in unpaid BC premiums and incorrectly paid HMO capitation fees for petitioner and her husband.

CONCLUSIONS OF LAW

The county agency is correctly seeking recovery of a \$2,430.01 BadgerCare (BC) Plus overpayment to the petitioner during the period of December 1, 2013 through July 31, 2014, due to her failure to timely report an increase in her husband's earned income resulting in unpaid BC premiums and incorrectly paid HMO capitation fees for petitioner and her husband.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby Dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

[REDACTED]

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

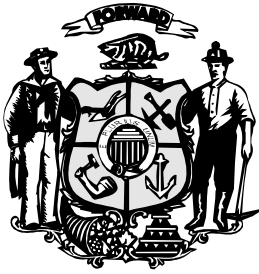
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 3rd day of August, 2015

\sGary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 3, 2015.

Rock County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability